

# Proposed Rules

Federal Register

Vol. 73, No. 147

Wednesday, July 30, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## DEPARTMENT OF AGRICULTURE

### Agricultural Marketing Service

#### 7 CFR Part 1150

[Docket No. AMS DA-08-0035; DA-08-02]

#### National Dairy Promotion and Research Program; Invitation To Submit Comments on Proposed Amendments to the Order

**AGENCY:** Agricultural Marketing Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This document invites comments on a proposed amendment to the Dairy Promotion and Research Order (Dairy Order). The proposal would modify the composition of the National Dairy Promotion and Research Board (Dairy Board) by changing the number of member seats in six of the 13 geographic regions. This modification was requested by the Dairy Board, which administers the Dairy Order, to better reflect the geographic distribution of milk production in the 48 contiguous States. The Department will issue a final rule once public comments have been received and considered.

**DATES:** Comments must be submitted on or before August 14, 2008.

**ADDRESSES:** Comments on this proposed rule should be identified with the docket number AMS-DA-08-0035; DA-08-02. Commenters should identify the date and page number of the issue of the Proposed Rule. Interested persons may comment on this proposed rule using either of the following procedures:

- **Mail:** Comments may be submitted by mail to Whitney A. Rick, Chief, Promotion and Research Branch, Dairy Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2958-S, Stop 0233, Washington, DC 20250-0233.

- **Internet:** <http://www.regulations.gov>.

All comments to this proposed rule, submitted by the above procedures will be available for viewing at: [http://](http://www.regulations.gov)

[www.regulations.gov](http://www.regulations.gov), or at USDA, AMS, Dairy Programs, Promotion and Research Branch, Room 2958-S, 1400 Independence Ave., SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday, (except on official Federal holidays). Persons wanting to view comments in Room 2958-S are requested to make an appointment in advance by calling (202) 720-6909.

#### FOR FURTHER INFORMATION CONTACT:

Whitney A. Rick, Chief, Promotion and Research Branch, Dairy Programs, AMS, USDA, 1400 Independence Ave., SW., Room 2958-S, Stop 0233, Washington, DC 20250-0233. Phone: (202) 720-6909. E-mail: [Whitney.Rick@usda.gov](mailto:Whitney.Rick@usda.gov).

**SUPPLEMENTARY INFORMATION:** This proposed rule is issued pursuant to the Dairy Production Stabilization Act (Act) of 1983 [7 U.S.C. 4501-4514].

#### Executive Order 12866

The Office of Management and Budget has waived the review process required by Executive Order 12866 for this action.

#### Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have a retroactive effect. If adopted, this rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Dairy Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 4509 of the Dairy Act, any person subject to the Dairy Order may file with the Secretary a petition stating that the Dairy Order, any provision of the Dairy Order, or any obligation imposed in connection with the Dairy Order is not in accordance with the law and request a modification of the Dairy Order or to be exempted from the Dairy Order. Such person is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Dairy Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

#### Regulatory Flexibility Act

The Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601-612).

For the purpose of the Regulatory Flexibility Act, small businesses in the dairy industry have been defined as those employing less than 500 employees. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than \$750,000. In the 48 contiguous States, there are approximately 70,000 dairy farms subject to the provisions of this Dairy Order. Most of the parties subject to the Dairy Order are considered small entities.

The proposed rule would amend the Dairy Order by modifying the number of member seats on the Dairy Board in six of the 13 geographic regions. The proposed amendment is being made to better reflect the geographic distribution of milk produced within each of the 13 regions of the contiguous 48 States.

The Dairy Order is administered by a 36-member Board representing 13 geographic regions within the contiguous 48 States. The Dairy Order provides that the Dairy Board shall review the geographic distribution of milk production throughout the United States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to better reflect the geographic distribution of milk production volume in the 48 contiguous States.

Based on a review of the 2007 geographic distribution of milk production, the Dairy Board has concluded that the number of Dairy Board members for six of the 13 geographical regions should be changed. The Dairy Board was last modified in 2003 based on 2002 milk production.

The proposed amendment should not have a significant economic impact on persons subject to the Dairy Order. The proposed changes merely would allow representation of the Dairy Board to better reflect geographic milk production in the contiguous 48 States.

**Paperwork Reduction Act**

In accordance with the Office of Management and Budget (OMB) regulation [5 CFR part 1320] which implements the Paperwork Reduction Act of 1995 [44 U.S.C. chapter 35], the information collection requirements and recordkeeping provisions imposed by the Dairy Order have been previously approved by OMB and assigned OMB Control No. 0581-0093. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this rule.

**Statement of Consideration**

The Dairy Order is administered by a 36-member Dairy Board representing 13 geographic regions within the contiguous 48 States. The Dairy Order provides in section 1150.131 that the

Dairy Board shall review the geographic distribution of milk production volume throughout the contiguous 48 States and, if warranted, shall recommend to the Secretary a reapportionment of the regions and/or modification of the number of members from regions in order to best reflect the geographic distribution of milk production in the contiguous 48 States. The Dairy Board is required to conduct the review at least every five years and not more than every three years. The Dairy Board was last modified in 2003 based on 2002 milk production.

Based on a review of the 2007 geographic distribution of milk production, the Dairy Board has concluded that the number of Dairy Board members for six of the 13 geographic regions should be changed.

The Dairy Order specifies the formula to be used to determine the number of Dairy Board seats in each of the 13 geographic regions designated in the Dairy Order. Under the formula, the total milk production for the contiguous 48 states for the previous calendar year is divided by 36 to determine a factor of pounds of milk represented by each Dairy Board member. The resulting factor is then divided into the pounds of milk produced in each region to determine the number of Dairy Board members for each region. Accordingly, the following table summarizes by region the volume of milk production distribution for 2007, the percentage of total milk production, the current number of Dairy Board seats per region, and the proposed number of Dairy Board seats for each region.

Region and States	Milk production (mil lbs)	Percentage of total milk production	Current number of board seats	Proposed number of board seats
1. Oregon, Washington .....	7,764	4.2	2	1
2. California .....	40,683	21.9	7	8
3. Arizona, Colorado, Idaho, Montana, Nevada, Utah, Wyoming ...	21,212	11.4	3	4
4. Arkansas, Kansas, New Mexico, Oklahoma, Texas .....	18,200	9.8	3	4
5. Minnesota, North Dakota, South Dakota .....	10,741	5.8	2	2
6. Wisconsin .....	24,080	13.0	5	5
7. Illinois, Iowa, Missouri, Nebraska .....	8,948	4.8	2	2
8. Alabama, Kentucky, Louisiana, Mississippi, Tennessee .....	3,119	1.7	1	1
9. Indiana, Michigan, Ohio, West Virginia .....	16,148	8.7	3	3
10. Florida, Georgia, North Carolina, South Carolina, Virginia .....	6,506	3.5	1	1
11. Delaware, Maryland, New Jersey, Pennsylvania .....	12,008	6.5	3	2
12. New York .....	12,103	6.5	3	2
13. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont .....	4,046	2.2	1	1
Total: 48 Contiguous States .....	185,558	100	36	36

\*Based upon preliminary 2007 NASS milk production data, February 2008.

In 2007, total milk production was 185,558 million pounds and each of the Dairy Board members would represent 5,154 million pounds of milk. For 2002, total milk production was 169,643 million pounds of milk and each of the Board members represented 4,712 million pounds of milk.

Based on the 2007 milk production data, the Dairy Board proposes that member representation in Region 2 (California), Region 3 (Arizona, Colorado, Idaho, Montana, Nevada, Utah, and Wyoming), and Region 4 (Arkansas, Kansas, New Mexico, Oklahoma, and Texas) each be increased by one member, and member representation in Region 1 (Oregon and Washington), Region 11 (Delaware, Maryland, New Jersey, and Pennsylvania), and Region 12 (New York) each be decreased by one member.

Milk production in Region 2 increased to 40,683 million pounds in

2007, up from 34,884 million pounds in 2002, indicating eight Dairy Board members (40,683 divided by 5,154 = 8) compared to seven Dairy Board members based on 2002 milk production data. Milk production in Region 3 increased to 21,212 million pounds in 2007, up from 16,291 million pounds in 2002, indicating four Dairy Board members (21,212 divided by 5,154 = 4) compared to three Dairy Board members based on 2002 milk production data. Milk production in Region 4 increased to 18,200 million pounds in 2007, up from 15,313 million pounds in 2002, indicating four Dairy Board members (18,200 divided by 5,154 = 4) compared to three Dairy Board members based on 2002 milk production data.

Milk production in Region 1 increased to 7,764 million pounds in 2007, up from 7,713 million pounds in 2002. The Dairy Board has determined that Region 1 milk production data does

not continue to support 2 seats. Based on the data, the Dairy Board is recommending that one seat from Region 1 be assigned to another region, thereby reducing Region 1 Dairy Board members from two members to one member. In Region 11, milk production decreased to 12,008 million pounds in 2007 down from 12,492 million pounds in 2002, indicating two Dairy Board members for the region (12,008 divided by 5,154 = 2) compared to three members based on 2002 data. Also, in Region 12, milk production decreased to 12,103 million pounds in 2007 down from 12,217 million pounds in 2002, indicating two Dairy Board members for the region (12,103 divided by 5,154 = 2) compared to three members based on 2002 data.

Accordingly, it is proposed that member representation in Region 2 be increased from seven members to eight members, and Region 3 and Region 4 representation each be increased from

three members to four members; Region 1 representation be decreased from two members to one member and Region 11 and Region 12 representation each be decreased from three members to two members.

A 15-day comment period is provided for interested persons to comment on this proposed rule. Twelve terms of existing Dairy Board members will expire on October 31, 2008. Thus, a 15-day comment period is provided to allow for a timely appointment of new Dairy Board members based on the current geographic distribution of milk production in the contiguous 48 States.

**List of Subjects in 7 CFR Part 1150**

Dairy Products, Milk, Promotion, Research.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1150 be amended as follows:

**PART 115—Dairy Promotion Program**

1. The authority citation for 7 CFR part 1150 continues to read as follows:

**Authority:** 7 U.S.C. 4501–4514 and 7 U.S.C. 7401

2. In § 1150.131, paragraphs (a)(1), (a)(2), (a)(3), (a)(4), (a)(11), and (a)(12) are revised as follows:

**§ 1150.131 Establishment and membership.**

(a) \* \* \*

(1) One member from region number one comprised of the following States: Washington and Oregon.

(2) Eight members from region number two comprised of the following State: California.

(3) Four members from region number three comprised of the following States: Arizona, Colorado, Idaho, Montana, Nevada, Utah and Wyoming.

(4) Four members from region number four comprised of the following States: Arkansas, Kansas, New Mexico, Oklahoma and Texas.

\* \* \* \* \*

(11) Two members from region number eleven comprised of the following States: Delaware, Maryland, New Jersey and Pennsylvania.

(12) Two members from region number twelve comprised of the following State: New York.

\* \* \* \* \*

Dated: July 24, 2008.

**Lloyd C. Day,**  
*Administrator, Agricultural Marketing Service.*

[FR Doc. 08–1469 Filed 7–24–08; 3:37 pm]

**BILLING CODE 3410–02–P**

**DEPARTMENT OF JUSTICE**

**8 CFR Parts 1001, 1003, 1292**

[Docket No. EOIR 160P; A.G. Order No. 2980–2008]

RIN 1125–AA59

**Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances**

**AGENCY:** Executive Office for Immigration Review, Justice.

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** This rule proposes to change the rules and procedures concerning the standards of representation and professional conduct for attorneys and other practitioners who appear before the Executive Office for Immigration Review (EOIR), which includes the immigration judges and the Board of Immigration Appeals (Board), and to clarify who is authorized to represent and appear on behalf of individuals in proceedings before the Board and the immigration judges. Current regulations set forth who may represent individuals in proceedings before EOIR and also set forth the rules and procedures for imposing disciplinary sanctions against attorneys or other practitioners who engage in criminal, unethical, frivolous, or unprofessional conduct before EOIR. The proposed revisions would increase the number of grounds for discipline and improve the clarity and uniformity of the existing rules while incorporating miscellaneous technical and procedural changes. The changes proposed herein are based upon the Attorney General’s recent initiative for improving the adjudicatory processes for the immigration judges and the Board, as well as EOIR’s operational experience in administering the disciplinary program since the current process was established in 2000.

**DATES:** Written comments must be submitted on or before September 29, 2008.

**ADDRESSES:** Please submit written comments to John N. Blum, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia, 22041. To ensure proper handling, please reference RIN No. 1125–AA59 or EOIR docket number 160P on your correspondence. You may view an electronic version and provide comments via the Internet by using the [www.regulations.gov](http://www.regulations.gov) comment form for this regulation. When submitting comments electronically, you must include RIN No. 1125–AA59 in the

subject box. Additional information regarding the posting of public comments is in the **SUPPLEMENTARY INFORMATION** section.

**FOR FURTHER INFORMATION CONTACT:** John N. Blum, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, Virginia, 22041, telephone (703) 305–0470 (not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

**Posting of Public Comments**

Please note that all comments received are considered part of the public record and made available for public inspection online at <http://www.regulations.gov>. Such information includes personal identifying information (such as your name, address, etc.) voluntarily submitted by the commenter.

If you want to submit personal identifying information (such as your name, address, etc.) as part of your comment, but do not want it to be posted online, you must include the phrase “PERSONAL IDENTIFYING INFORMATION” in the first paragraph of your comment. You must also locate all the personal identifying information you do not want posted online in the first paragraph of your comment and identify what information you want redacted.

If you want to submit confidential business information as part of your comment but do not want it to be posted online, you must include the phrase “CONFIDENTIAL BUSINESS INFORMATION” in the first paragraph of your comment. You must also prominently identify confidential business information to be redacted within the comment. If a comment has so much confidential business information that it cannot be effectively redacted, all or part of that comment may not be posted on <http://www.regulations.gov>.

Personal identifying information identified and located as set forth above will be placed in the agency’s public docket file, but not posted online. Confidential business information identified and located as set forth above will not be placed in the public docket file. If you wish to inspect the agency’s public docket file in person by appointment, please see the **FOR FURTHER INFORMATION CONTACT** paragraph.

This rule proposes to amend 8 CFR parts 1001, 1003, and 1292 by changing the present definitions and procedures concerning professional conduct for practitioners, which term includes attorneys and representatives, who